



CODE OF ORDINANCES

TOWN OF GARRETT PARK

MONTGOMERY COUNTY, MARYLAND

1996 Edition

Including amendments through 10/04/2019

ADOPTION OF THE GARRETT PARK TOWN CODE

Town of Garrett Park Code of Ordinances

Section 1. There is hereby adopted by the Council of the Town of Garrett Park the code entitled "Code of Ordinances, Town of Garrett Park, 1996 Edition," containing certain ordinances of a general and permanent nature as compiled, consolidated and codified in Chapters 1 through 10 inclusive.

Section 2. The provisions of this Code shall be in force twenty days after its passage.

Section 3. Upon the taking effect of the Code hereby adopted, all ordinances of a general and permanent nature enacted before the effective date of this Code shall be and hereby are repealed, except such as are by reference thereto or expressly saved from repeal or continued in force and effect for any purpose.

Section 4. The repeal provided for in the Section 3 of this ordinance shall not affect any offence or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the enactment date; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the enactment date; nor shall such repeal affect any ordinance or resolution promising or guaranteeing the payment of money for the Town or authorizing the issue of any bonds of the Town or any evidence of the Town's indebtedness or any contract or obligation assumed by the Town; nor shall it affect the annual tax levy; nor shall it affect any right or franchise conferred by ordinance or resolution of the Town on any person or corporation; nor shall it affect any ordinance adopted for purposes that have been consummated; nor shall it affect any ordinance that is temporary although general in effect, or special although permanent in effect; nor shall it affect any ordinance relating to the salaries of the Town officers or employees; nor shall it affect any ordinance naming, renaming, opening, closing, accepting or vacating streets or alleys in the Town; nor shall it affect any ordinance adopted after the enactment date; nor shall it repeal or affect the validity of resolutions adopted by the Council which are in full force and effect as of the date of adoption of this ordinance; nor shall it revive any ordinance, or part thereof, which has been repealed by an ordinance that is repealed by this ordinance.

Section 5. Any and all additions or amendments to this Code when passed in such form as to indicate the intention of the Town to make the same a part thereof, shall be deemed to be incorporated in such Code so that reference to the Code of Ordinances of the Town of Garrett Park, 1996 edition, shall be understood and intended to include such additions and amendments

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Section 6. A copy of this Code shall be kept on file at the Town office and will include all additions and amendments thereto. The Code shall be available for all persons desiring to examine the same.

Section 7. In the case of the amendment to any section of this Code for which a penalty is not provided, the general penalty as provided in Chapter 1 of this Code, shall apply to the section as amended; or in case such amendment contains provisions for which a penalty, other than the aforementioned general penalty, is provided in another section in the same article, the penalty so provided in such other section of the article shall be held to relate to the section so amended unless such penalty is specifically repealed therein.

Section 8. It shall be unlawful for any person, firm or corporation to change or amend by additions or deletions any part or portion of this Code, or to insert or to delete pages or portions thereof, or to alter or tamper with this Code in any manner whatsoever which will cause the law of the Town to be misrepresented thereby. Any person, firm, or corporation violating this section shall be punished as provided in the Town Charter.

Section 9. Typographical and grammatical errors may be corrected in the printing of the Garrett Park Town Code without the necessity of a further amending ordinance.

[Ordinance 1996-01; 03/11/1996]

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CHAPTER 1

GENERAL PROVISIONS

Section 101. How Code Designated and Cited

The ordinances embraced in the following chapters and sections shall constitute and be designated as “The Code of Ordinances of the Town of Garrett Park” and may be so cited. The Code may also be cited as “Garrett Park Town Code.”

Section 102. Definitions and Rules of Construction

In the construction of this Code and of all ordinances, the following definitions and rules shall be observed, unless such definitions and rules would be inconsistent with the manifest intent of the Town Council:

Business entity. The term “business entity” as used herein shall be defined in accordance with the provisions of the Election Law Article, Section 14-101(c) of the Annotated Code of Maryland, 2010 Replacement Volume, as amended.
(Ord. 2011-02: Adopted 03/14/2011: Effective 04/04/2011)

Bond. When a bond is required, an undertaking in writing shall be sufficient.

Charter. The word “Charter” shall mean the Charter of the Town of Garrett Park.

Code Enforcement Official. The Mayor or person appointed by the Mayor, with the approval of the Town Council, whose duty shall be to issue citations, as provided in Chapter 9 of this Code, to any person or persons alleged to be committing an infraction.

Council. The duly elected Council of the Town of Garrett Park.

County. The words “the County” or “this County” shall refer to Montgomery County, Maryland.

Computation of time. The time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day be Saturday, Sunday or a legal holiday, that shall be excluded.

Joint Authority. All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

Keeper and Proprietor. The words “keeper” and “proprietor” shall mean and include any person, whether acting by himself or herself as or by a servant, agent or employee.

Mayor. The duly elected Mayor of the Town of Garrett Park.

Month. The word “month” shall mean a calendar month.

Number. Words used in the singular include the plural and the plural includes the singular number.

Oath. The word “oath” shall be construed to include an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words “swear” and “sworn” shall be equivalent to the words “affirm” and “affirmed.”

Open Porch. An open porch may or may not include a roof, and, except for support structures, the area above the railing height required by Montgomery County shall be open to the air, excluding up to 15 inches of decorative trim, and at least fifty (50) per cent of the area below the railing must be open to the air, and the porch shall not be enclosed by material of any type, including latticework or screening. (Ord. 1999-03, adopted 09/13/1999)

Owner. The word “owner,” applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land.

Person. The word “person” shall include a corporation, company, partnership, association, society, or other entity as well as a natural person but does not include a government agency.

Property. The word “property” shall include real and personal property.

Sidewalk. A path or way, paved or unpaved, whether publicly or privately owned, intended for public use by pedestrians.

Signature or Subscription. Signature or subscription includes a mark when the person cannot write, his name being written near it and witnessed by a person who writes his own name as witness.

State. The words “the state” or “this state” shall be construed to mean the State of Maryland.

Street. The word “street” shall include any public ways, roads, highways, and avenues within the Town.

Tenant, Occupant. The words “tenant” and “occupant,” applied to a building or land, shall include any person who occupies the whole or a part of such building or land, whether alone or with others.

Time. Words used in the past or present tense include the future as well as the past and present.

Town. The words “the town” or “this town” shall mean the Town of Garrett Park, in the County of Montgomery and State of Maryland, except as otherwise provided.

Section 103. Catchlines of Sections

The underlined catchlines of the several sections of this Code are intended as mere catchwords to indicate the contents of the sections and shall not be deemed as any part of such sections, nor unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or re-enacted.

Section 104. Effect of Repeal of Ordinances

The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offence committed under the ordinance repealed.

Section 105. Provisions Deemed Continuations of Existing Ordinances

The provisions appearing in this Code, so far as they are the same in substance as ordinances existing at the effective date of this Code, shall be considered as continuations thereof and not as new enactments.

Section 106. Severability

It is hereby declared to be the intention of the Town Council that the sections, paragraphs, sentences, clauses and words of this Code are severable, and if any word, clause, sentence, paragraph or section of this Code shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining words, clauses, sentences, paragraphs and sections of this Code, since the same would have been enacted by the Town Council without the incorporation in this Code of any such unconstitutional or invalid word, clause, sentence, paragraph or section.

Section 107. General Penalty, Continuing Violations

Violation of any provision of this Code or of any ordinance shall be a misdemeanor, unless specifically declared to be a municipal infraction, and may be punished by a fine not exceeding \$1,000. Each day any violation of any provision of this Code, or any ordinance, resolution, rule, regulation or order of the Town is continued shall constitute a separate offence.

Section 108. Exemption from County Ordinances

Pursuant to the authority conferred by Article 23A of the Annotated Code of Maryland and by Section 2-96 of the Montgomery County Code, the Town of Garrett Park hereby exempts itself from all legislation heretofore or hereafter enacted by Montgomery County, Maryland relating to any subject with respect to which the Town of Garrett Park has a grant of legislative authority provided either by public general law or the charter of the Town of Garrett Park.

Section 109. Exception to General Exemption

The following chapters of the Montgomery County Code 1984, as amended and future amendments to these same chapters when adopted by Montgomery County, are exceptions to the above general exemption and shall be applicable within the Town of Garrett Park.

<u>CHAPTER</u>	<u>TITLE</u>
3	Air Quality
3A	Alarms
5	Animal Control
7	Bicycles
8	Buildings
8A	Cable Communications
10	Day-Care Centers
11	Consumer Protection
15	Eating and Drinking Establishments
17	Electricity
18	Elm Disease
19	Erosion and Sediment Control
21	Fire and Rescue Services
22	Fire Safety Code
23A	Group Residential Care Facilities
24	Health and Sanitation
25	Hospitals, Sanitariums, Nursing, and Care Homes
26	Housing and Building Maintenance Standards
27	Human Relations and Civil Liberties
27A	Individual Water Supply and Sewage Disposal Systems
30A	Montgomery County Municipal Revenue Program
30B	Massage Establishments and Massage Technicians
32-17A	Urination and Defecation in Public [Ord. 2005-05; 11/14/05]
34	Plumbing and Gas Fitting
36	Pond and Excavation Safety Standards
38A	Radio, Television and Electrical Appliance Installation and Repair
39	Rat Control
40	Real Property

44	Schools and Camps
44A	Secondhand Personal Property
45	Sewers, Sewage Disposal, and Drainage
46	Slaughterhouses
47	Vendors [Ord. 2004-04; 10/11/2004]
51	Swimming pools
52	Taxation
55	Unsafe Buildings

Section 110. General Exceptions to Exemption

Notwithstanding any of the above, County legislation shall apply where:

(a) Legislation is enacted by the Montgomery County Council sitting as a Board of Health for Montgomery County;

(b) Legislation is enacted by Montgomery County involving County revenue or taxation pursuant to Tax -- Property Article, 1994, the Annotated Code of Maryland, as amended; and

(c) The General Assembly, by express provision of Public Law, so provides.

Section 111. County Enforcement of Town Laws

Nothing contained in this Chapter shall limit or otherwise affect the Town's authority, whether exercised previously or in the future, to request the enforcement of Town legislation in whole or in part by Montgomery County and to enter into agreements providing for the same.

Section 112. General and Administrative

(a) Checks. No check for the expenditure of funds by the Town of Garrett Park shall be signed by a Town official so authorized until the payee and amount of payment have been specified on the check, and a Town official has either verified that the goods or services for which payment is being rendered have been satisfactorily received or supplied or that the check is for advance payment for such services or supplies. Violation of the requirements of this paragraph shall be a municipal infraction, punishable by a fine of \$50 for each check issued over the signature of the Town official in violation of this paragraph.

(b) Money Orders. No official of the Town of Garrett Park shall purchase, or authorize to be purchased, a money order utilizing Town funds. Violation of the requirements of this paragraph shall be a municipal infraction, punishable by a fine of \$50 for each money order purchased or authorized by the Town official in violation of this paragraph.

[Ord. 1998-01; 02/09/1998]

Section 113. Garrett Park Archives and Archives Committee

(a) Statement of Policy

(1) History. For many years, the Town, through its Clerk-Treasurers and interested residents, has collected documents, maps, pictures, memorabilia, and many other items relevant to the long and colorful history of the Town and its residents. The Town recognizes the unique resource that these materials provide and wishes to ensure their continued safekeeping, encourage their expansion, and make the collection more accessible to the public while protecting its integrity.

(2) Purpose. To formalize the establishment of the Garrett Park Town Archives and to organize the Garrett Park Archives Committee.

(b) The Garrett Park Town Archives

(1) There is hereby created the Garrett Park Town Archives, hereinafter known as the Archives.

(2) The Archives shall consist of documents, maps, pictures, memorabilia, and other items of an historic interest, as well as such public records that Maryland law requires the Town to preserve or that may be generated in the governance of the Town.

(c) The Committee

(1) There is hereby created a Garrett Park Archives Committee, to be named "The Barbara Shidler Archives Committee", hereinafter known as the Committee.

(2) The Committee shall consist of no more than seven (7) citizen members, the Clerk-Treasurer, and a member of the Council. The Mayor shall be an *ex officio* member of the Committee.

(3) The Mayor shall appoint, with the approval of the Council, members of the Committee from among Town residents who have lived in Garrett Park for at least one year and who are qualified by special interest, knowledge, experience or training in such fields as library science, records conservation, database compilation and maintenance, historic preservation, oral history, or complementary disciplines. If feasible, one member of the Archives Committee shall be drawn from the membership of the Historic Preservation Committee established by Section 400 of this Code. Members shall be appointed for a term of five years, except that in making initial appointments, some appointments shall be for less than five years so that no more than two (2) terms shall have simultaneous expiration dates. The Mayor shall appoint a Council member, and that member's term on the Committee shall be concurrent with the member's Council term. Vacancies on the Committee that are

created by the resignation or other discontinuation of a member prior to the expiration of the member's term shall be selected by the Mayor, with the advice and consent of the Council, for the unexpired term of the replaced member. A member may be removed for failure to attend meetings regularly or misconduct.

(4) The members of the Committee shall serve without compensation, but they may be reimbursed for actual expenses incurred in the performance of their duties, provided such expenses are approved by the Council.

(5) The Town shall provide in its annual budget such funds as may be required for the operation of the Committee.

(6) The Chair and Vice-Chair shall be elected by the members of the Committee. The Committee may adopt such procedural rules as may be necessary or appropriate for the conduct of its business. The Committee may create a category of adjunct Committee membership to be comprised of no more than three persons, not residents of Garrett Park, whose participation on the Committee, by virtue of academic, professional or other qualification in the fields specified in Section 113 (c)(3), above, benefits the Committee and Town.

(d) Powers of the Committee

(1) The Committee, in conformity with the policy set forth in this Section of the Code, shall advise the Council with respect to all issues involving or affecting the Town Archives.

(2) The Committee may, from time to time, undertake educational initiatives to advance the understanding and appreciation of the Archives and on other historical matters of general interest in the Town.
(Section 113: Ord. 2010-03; 07/12/2010)

CHAPTER 2

ELECTIONS

Section 201. Voter Registration

- a) Residents of Garrett Park who meet the criteria established in Sections 78-20 and 78-22 of the Charter are eligible to be registered to vote in all Town of Garrett Park elections.
- b) Following procedures adopted by the election judges consistent with section 78-22 of the Charter, Election Judges and the Town Manager are authorized

to register qualified persons to vote.

- c) It is the policy of the Town that all eligible voters shall be provided with an opportunity to vote. There shall be provision for the registration of eligible residents at the election.
- d) Registration of voters shall take place any time the Town office or the polls are open as well as other times or places that the election judges may designate.
- e) The Town Manager shall maintain a roll of registered voters which includes all qualified voters registered with Montgomery County as well as those registered only with the Town. For use for Town elections, the roll shall be updated as close to the day of elections as Montgomery County will allow.
- f) Copies of the registration rolls are public information and may be made available to individuals requesting them.
- g) Poll books or equivalent electronic records being used by poll workers to manage the voting process shall be confidential until the polls are closed and vote counting is completed.
- h) Copies of the poll books are public information and may be made available to individuals requesting them at the completion of vote counting and certification of the results.

Section 202. Nominations

- a) Nominations for elective office shall be made at a meeting determined by the Town Council in consultation with the Election Judges and consistent with provisions of the Charter, and may be held by the Council, by a town-recognized organization such as the Citizens Association, or in another manner, time, and place determined by the Council to be fair, open, and accessible.
- b) All persons nominated and running for elective office must file a financial disclosure as provided in Section 112.

Section 203. Voting at the Polling Place

- a) The polls shall be open on election day at a time or times that allow all residents the opportunity to vote including early hours before voters leave for work, late hours for voters after returning from work, and at appropriate times throughout the day to accommodate all other voters.

- b) The election, its location, and the hours that the polls are open shall be advertised in such a way that residents of the Town are likely to be aware of the event and their ability to vote. The criteria for, and availability of, registration and absentee voting shall also be disseminated.
- c) The polling place shall be easily accessible by all voters.
- d) The location of the voting and the arrangement of checking in and casting ballots shall insure the privacy of those voting. The arrangements shall provide sufficient barriers to prevent others in the area from hearing conversations between the voters and election officials and prevent others from observing the votes being cast.
- e) Photography or recording of election activities is prohibited, and, except for Election Judges, the use of phones or other electronic devices by those in the vicinity of the voting to communicate to others beyond the voting area is prohibited.
- f) Any attempts to influence or intimidate voters at the polling place are prohibited.
- g) No person shall canvass, electioneer, solicit votes or post any campaign material in any polling place or within a fifty (50) foot radius from the entrance and exit of the building closest to that part of the building where ballots are cast.
- h) The Election Judges have full power to determine whether any of the provisions in this section have been violated and to order the expulsion of those persons in violation.
- i) At least one Election Judge shall be present to supervise the voting process whenever the polls are open. The Chief Election Judge shall either be present or be available on call to deal with any issues.

Section 204. Ballots

Candidates shall be listed on ballots in alphabetical order and shall not be identified as to incumbency or political party affiliation.

Section 205. Absentee Voting

- a) Any registered voter may vote as an absentee.
- b) Absentee ballots shall be prepared and be available as soon as possible after the slate of candidates for election has been determined and wording for

other issues to be included on the ballot has been completed, but in no case shall they be made available later than 14 days prior to the election.

- c) After they are prepared, absentee ballots shall be available at any time that the Town Office or the polls are open.
- d) A registered voter desiring to vote as an absentee may request an absentee ballot beginning 60 days preceding an election.
- e) The absentee voting process shall be designed so as to protect the privacy of the voter, assuring that the identification of the voter is separated from the vote cast.
- f) The absentee voting process shall be designed to assure that the person who requested the ballot is the one who submitted the ballot.
- g) Absentee ballots shall be made available and shall be accepted up to the time of the closing of polls on election day.
- h) The Election Judges shall assure that no person can vote both absentee and in person.
- i) The Election Judges shall determine the authenticity of absentee ballots and shall count the valid ballots together with those cast in person at the polls.

Section 206. Poll Watchers

- a) Any registered voter in the Town of Garrett Park may be a poll watcher.
- b) Poll Watchers may observe the voting process or the vote count process within the location where such process is being conducted. Poll Watchers must declare themselves to the Election Judges upon arrival. The Election Judges will determine where the Poll Watcher must stay while observing.
- c) Poll Watchers may not interfere with the voting process except to challenge a voter's qualifications. Such challenge may only be made to an Election Judge and the decision of the Election Judge on the challenge is final.

- d) Poll Watchers may observe the vote count, but conversations, questions, or other activities that interfere with or disrupt the vote counting process are prohibited. During the vote count, a Poll Watcher may not challenge or attempt to challenge any part of the process. A Poll Watcher may lodge a written complaint about the vote count with the Chief Election Judge after the completion of the count.

Section 112. Financial Disclosure Statement

All elected Town officials, all candidate for election to Town Offices and all Town staff shall file a financial disclosure statement with the Town annually, not later than 21 days prior to the general Town election. Failure to comply with the provisions of this Section may, in the case of elected officials or the Town staff, be cause for the Town Council to remove the offender from office. In the case of candidates for office, failure to comply with the provisions of this Section shall result in the removal of their names from the election ballot

(Ord. 2011-01: New Chapter 2: Adopted 03/14/2011, Effective 04/04/2011)

CHAPTER 3

ANIMALS AND FOWL

Section 301. Protection of Song Birds

(a) It shall not be lawful for any person to kill, destroy, maim, trap or take or to pursue with intent to kill, destroy, maim, trap or take by any device, contrivance or means whatever, any song bird within the corporate limits of the Town.

(b) Violation of this section is declared to be a municipal infraction, punishable by a fine of \$50.

CHAPTER 4

BUILDING, HOUSING AND BUSINESS REGULATIONS

Section 400. Garrett Park Historic Preservation Committee

(a) Statement of Policy

(1) History. Since its earliest days, the Town of Garrett Park has been marked by its stubborn resistance to attempted actions, private as well as public, internal and external alike, which threatened its quality and character as a 19th century village. During this long period it has gradually matured to its current state, absorbing decades of compatible growth, which served to strengthen and enhance its character. In the course of these years it has preserved and maintained the Town Plan in its original 19th century form with its structures of the 19th and 20th century situated harmoniously alongside each other and well back from the tree lined, curvilinear streets connecting with a single-lane country road (now State route #547) weaving its way through the Town. It has insulated its inner street system from the heavy traffic of the dense residential housing developments surrounding it in pursuance of the Town's desire to maintain its historic character against outside attempts to change the Town. The Town on its own initiative accomplished the inclusion of Garrett Park on the National Register of Historic Places in 1975.

(2) Purpose. Throughout its long history, the Town has managed its own internal affairs and plans to maintain this tradition. For these reasons, the Town has enacted this section, establishing a committee to develop and recommend policies, standards, criteria, and guidelines for the purpose of maintaining the historical heritage of Garrett Park congruent

with the policies, standards, and criteria established by the County under state law.

(b) The Committee

(1) There is hereby created a Garrett Park Historic Preservation Committee, hereafter known as the Committee.

(2) The Committee shall consist of five citizen members and a member of the Town Council appointed by the Mayor.

(3) The Mayor shall appoint the citizen members, with the approval of the Town Council, from among Town residents who have lived in Garrett Park for at least one year and who are qualified by special interest, knowledge or training in such fields as history, architecture, landscape architecture, urban design or historic preservation. All members shall be appointed for a term of three years, except that the Councilmember's term on the Committee shall expire at the end of his or her Council term. Those vacancies on the Committee that are created by the resignation or other discontinuation of a member prior to the expiration of the member's term shall be filled by the Mayor with the approval of the Town Council for the unexpired term of the replaced member. A member may be removed for failure to attend meetings regularly or for misconduct.

(4) The members of the Committee shall serve without compensation, but they may be reimbursed for actual expenses incurred in the performance of their duties, provided such expenses are approved by the Town Council.

(5) The Town shall provide in its annual budget such funds as may be required for the operation of the Committee.

(6) The Chair and Vice-Chair shall be elected by the members of the Committee. The Committee may adopt such procedural rules as may be necessary or appropriate for the conduct of its business.

(c) Powers of the Committee

(1) The Committee in conformity with the policy set forth in this section and with the policies expressed in Section 24A of the Montgomery County Code, shall develop and recommend regulation, standards, criteria and guidelines designed to preserve and enhance historic Garrett Park.

(2) The Committee shall maintain and update an inventory of historic, landscape, and environmental resources in the Town.

(3) The Committee shall serve as a clearinghouse for information on historic preservation and related issues for the residents of the Town

and shall collect and disseminate educational material related to its mission.

(4) The Committee may make recommendations to the Council in such subject areas as: width or size of yards, courts, or other open spaces, percentage of lot to be left unoccupied, and height standards.

Section 401. Building and Demolition Permits

(a) Purpose The Town of Garrett Park was placed on the National Register of Historic Places in 1975 because it has been able to maintain its 19th Century village plan while accommodating 90 years of growth. Section 401 is enacted so that this plan can continue to be maintained.

(b) Building Permits

(1) No building shall be erected, nor shall any exterior be altered, expanded or increased, or any addition made thereto or any work started thereon, or any excavation made in connection therewith, prior to the issuance of a building permit by both the appropriate Montgomery County Office(s) and the Clerk-Treasurer, except in the case of such minor repairs, minor alterations or accessory building as do not require permits from Montgomery County.

(2) An application for a building permit shall be made on a form provided by the Council and shall be accompanied by such plans, drawings, photographs and other documents as may be required by the Council.

(3) Town permits shall be valid for the same period of time as are Montgomery County permits and no changes in site location or setback shall be made until such changes have been approved by the Town as a revision to the permit.

(c) Demolition Permits

(1) No house or accessory building in excess of 400 square feet may be demolished or razed prior to the issuance of a demolition permit by the Town and appropriate Montgomery County office(s). A house situated on more than one lot may only be demolished or razed only if the site is replatted to a single lot.

(2) An application for a demolition permit shall be made on a form provided by the Council and shall be accompanied by such plans, drawings, photographs and other documents as may be required by the Council. A demolition permit must be approved by the Council, with the advice of the Garrett Park Historic Preservation Committee, and cannot be issued prior to a public hearing on the application. Town demolition permits shall be valid for the same period of time as are Montgomery County permits.

(3) Partial demolition of a house incidental to remodeling does not require a demolition permit; a building permit is required for remodeling as specified in Section 401(b).

Section 402. Building Setback Lines, Lot Coverage and Floor Area Ratio

(a) Purpose

(1) To protect the public health, safety and welfare of the Citizens of Garrett Park and, more specifically, to: preserve and protect the lands and improvements within the Town by ensuring that all proposed new construction and alterations to buildings in the Town be compatible with the Town's existing scale, natural topography, vegetation, trees, physical setting, and density of development.

(1.1) Preserve the unique park-like setting of the 19th century garden suburb, maintain the prevailing pattern of houses and open spaces, and retain the maximum amount of green area surrounding new or expanded houses.

(1.2) Encourage a compatible relationship between new or expanded houses and neighboring structures in scale, siting, and orientation on the lot.

(1.3) Maintain housing diversity and choice by retaining existing housing stock yet allowing a reasonable amount of expansion in living space.

(2) To establish stricter or additional building height, bulk, massing, design, location, setback and lot coverage requirements than those of the current Montgomery County Zoning Ordinance for the construction, repair, erection, or remodeling of houses, buildings, or other structures on land zoned for single-family residential use.

(3) To provide a procedure for a variance from the strict application of the building requirements contained in this section.

(b) Application and Interpretation

As provided in Article 28 of the Maryland Code, the Montgomery County Zoning Ordinance applies to all property in Garrett Park. In addition, all buildings on land zoned for single-family residential use

shall comply with the requirements of this Chapter 4 in effect at the time of the issuance of a Town building permit. If a term used in this Chapter is not defined herein, but is defined in the Montgomery County Zoning Ordinance, it shall have the meaning ascribed to it in the Montgomery County Zoning Ordinance.

(c) Setback, Lot Coverage and Floor Area Ratio Requirements

All buildings on land zoned for single-family residential use hereafter erected or altered shall adhere to the setback, lot coverage and floor area ratio requirements set forth below:

(1) Setback from street

No main building or new construction shall be nearer to any street right-of-way than thirty (30) feet. Additionally,

- (1.1) If any adjacent lot is occupied by a main building with a front yard setback greater than this requirement, no main building hereafter erected and no addition to an existing main building shall project beyond the line previously established by the existing main buildings on the adjacent lots; or
- (1.2) If only one adjacent lot is occupied by a main building with a front yard setback greater than this requirement, no main building hereafter erected and no addition to an existing main building shall project beyond a line established by the average of the front yard setback of the adjacent main building and thirty (30) feet.
- (1.3) Notwithstanding the above, open porches added to structures existing as of February 15, 2000 may extend up to eight (8) feet beyond the required front yard setback line and may be roofed.
- (1.4) For the purposes of Section 402 (c)(1)(1.1) and 402 (c)(1)(1.2) of the Garrett Park Town Code, if the main building on an adjacent lot is set back by more than 90 (ninety) feet, it shall be considered to be set back by 90 (ninety) feet.

(2) Setback from adjacent properties

No main building on land zoned for single-family residential use shall be nearer to any property line (other than a property line adjacent to a street right of way, as provided in Section 402(c)(1)) than the following:

- (2.1) Minimum side yard setback:

- (a) One side: 10 feet; and
- (b) Sum of both sides:
 - (i) 25 feet for lots with over 60 feet in width at the front main building line; or
 - (ii) 20 feet for lots with 60 feet or less in width at the front main building line.

(2.2) Minimum rear yard setback:

- (a) 25 feet for lots over 90 feet in depth at the location at which the main building is closest to the property line;
- (b) 15 feet for lots 90 feet or less in depth at the location at which the main building is closest to the property line.

(3) Maximum lot coverage

The maximum percentage of the lot area that may be covered by a main building is eighteen (18) percent and the maximum percentage of the lot area that may be covered by main and accessory buildings cumulatively is twenty (20) percent.

(4) Floor Area Ratio

The maximum floor area ratio for main plus accessory buildings is .375.

(d) The following exemptions for projections shall apply to the requirements of Sections 402(c)(1) and 402(c)(2).

(1) (A) Open roofless steps, stoops, exterior stairways and terraces may extend into any minimum front yard or rear yard setback area by not more than 9 feet.

(B) For lots over 90 feet in depth, open roofless porches and decks may extend into a minimum rear yard setback area by not more than 9 feet, provided that any such feature that is roofed may not extend more than 3 feet into any minimum rear yard setback area. For lots 90 feet or less in depth, open roofless porches and decks may not extend into a minimum rear yard setback area.

(2) Open roofed or roofless steps, stoops, exterior stairways, terraces, porches and decks may extend into any minimum side yard setback area not more than 3 feet.

(3) Open roofed steps, stoops, exterior stairways and terraces may not extend more than 3 feet into any minimum front yard or rear yard setback area.

(4) Any bay window, entrance or balcony may project not more than 3 feet into a minimum front yard or rear yard setback area, provided that such feature does not exceed 10 feet in width.

(5) Cornices and eaves may project not more than 2 ½ feet over any minimum setback area. This exemption does not apply to cornices and eaves on steps, stoops, exterior stairways, terraces, porches, decks, bay windows, entrances or balconies.

(6) Sills, leaders, belt courses, and similar ornamental features may project not more than 6 inches over any minimum setback area.

(7) Open, roofless fire escapes, if required by the Montgomery County building code, may project not more than 5 feet over any minimum setback area.

(8) Chimneys may project not more than 24 inches into any minimum setback area.

(9) Chimneys used as walls may not project into any minimum setback area.

(10) Air conditioners and heat pumps may project not more than 5 feet into any minimum front yard or rear yard setback area. Any air conditioners or heat pumps existing within any minimum side yard setback area prior to July 3, 2012 may be continued and replaced.

(e) The following building elements shall be included in the calculation of lot coverage and floor area ratio in accordance with the following table:

Element	Lot Coverage	Floor Area Ratio
Open and roofless steps, stoops, exterior stairways, and terraces	No	No
Open and roofed steps, stoops, exterior stairways, and terraces	Yes	No
Enclosed steps, stoops, exterior stairways, and terraces	Yes	Yes
Roofless and open porches and decks	No	No
Roofed open porches	Yes	No
Enclosed porches	Yes	Yes
Bay windows	Yes	Yes
Open roofless entrance or balcony	Yes	No

Open roofed entrance or balcony	Yes	No
Enclosed entrance or balcony	Yes	Yes
Cornices, eaves, sills, leaders, belt courses, and similar ornamental features	No	No
Chimneys	Yes	Yes
Open roofless fire escapes	No	No
Open roofed fire escapes	Yes	No
Enclosed fire escapes	Yes	Yes
Air conditioners and heat pumps	No	No

Section 403. Variances

(a) Purpose

It is the purpose of this Section to provide a procedure for a variance from the strict application of these building requirements in specific cases where the unusual dimensions, shape, topography, or other exceptional characteristics of a particular lot are such that the strict and literal enforcement of the Chapter would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship on, the owner of the property.

(b) Procedure

(1) Application. An application for a variance shall be made to the Council on a form provided by the Council, shall be accompanied by such plans, drawings, photographs and other documents as may be required by the Council and shall set forth the Section of this Chapter under which the building permit was denied, the basis for the claim of need for relief and the nature and extent of the relief sought.

(2) Public Hearing. On each application for a variance a public hearing shall be held and a written opinion made public.

(c) Conditions upon which relief may be predicated

(1) No variance shall be granted unless the Council finds, on the basis of the evidence of record that good cause has been shown on the following grounds for relief from the strict application of the building requirements.

(1.1) Because of the unusual dimensions, shape, topography or other exceptional characteristics of the lot, the lot cannot accommodate the building sought to be erected if the requirements of Section 402 are strictly applied to the construction and the strict and literal application of Section 402

to the lot would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship on, the owner of the property.

(1.1.1) The following conditions do not constitute hardship or difficulty as those terms are used herein:

1. Alleged violations of this Chapter by others;
2. The existence of nearby non-conforming uses;
3. The granting of a waiver or variance on other lots;
4. Any condition that results from the actions of the applicant; or
5. The existence of a building constructed in violation of this Chapter.

(1.1.2) If the alteration of the dwelling is required mainly as an aid to a disabled resident and no other reasonable feasible alternative is available, then the practical difficulties standard of Section 403(c)(1.1) above shall be deemed to have been met.

(1.1.3) If the building(s) sought to be erected cover more than eighteen (18) per cent of the net lot area and if the net lot area is equal to or less than 8,600 square feet then the exceptional characteristics standard of Section 403(c)(1.1) above shall be deemed to have been met.

(1.2) When considering an application for a variance, the Council must consider these criteria:

(1.2.1) The net lot area to be covered by buildings, including accessory buildings, should not exceed twenty (20) percent of the net lot area, unless the lot area is equal to or less than 8,600 square feet. If the lot area is equal to or less than 8,600 square feet, then the net lot area to be covered by buildings, including accessory buildings, shall not exceed 1,720 square feet or 25 per cent of the net lot area, whichever is less. Net lot area is defined as the total horizontal area included within the rear, side and front lot lines; and

(1.2.2) whether approval of the application for relief will be in harmony with the general purposes of this Chapter and will not be contrary to the public interest.

(2) Specific Conditions. In granting a variance, the Council shall permit the least departure from the requirements of this Chapter that will give relief to the applicant. The Council may attach such conditions to the grant of variance, as it considers necessary to accomplish the intent of Sections 402 and 403 of this Code.

(d) Exemptions

(1) Existing Buildings. An existing building which was lawful when established, but which no longer conforms to the requirements of this Chapter because of the amendment of this Chapter, may continue as built and may be replaced or repaired, but may not be expanded, except to the extent that such expansion meets the requirements of this Chapter.

(2) Existing Building Permits
Construction for which a building permit was granted both by Montgomery County and by the Town before July 3, 2012 may proceed under the regulations and conditions that prevailed when the permits were granted provided, however, that any such construction that does not comply with the provisions of this Chapter shall have begun within twenty-four (24) months of July 3, 2012.

Section 404. Construction

All construction covered by this Code must conform to standards established in the Montgomery County Building, Electrical and Zoning Codes and to Washington Suburban Sanitary Commission and National Plumbing Codes. Any house connections will require a permit from the Washington Suburban Sanitary Commission and the Clerk-Treasurer must receive notification of such permits.

Section 405. Enforcement

(a) The Mayor shall appoint an inspector to monitor building and demolition covered by this Code, whose duty it shall be to submit recommendations to the Mayor and Council. The inspector shall inspect all new construction and demolition activities, check compliance with the building permit and report all violations of these regulations to the Mayor and Council. The inspector shall be empowered to stop all building construction or demolition until any violations thereof are corrected. The inspector shall have no discretionary power to modify or waive any of these regulations.

(b) Any violation of any of the provisions of this Chapter shall be a municipal infraction subject to the imposition of a fine of \$100.

(c) Each day that the violation continues shall be a separate offense.

(d) In any case where the Mayor has reason to believe that there may have been an un-remedied violation of this Code, the Mayor may issue a Notice of Violation, setting forth the information required of Section 903 of this Code.

(e) If, following notice and a hearing on the record, the Council shall find that one or more violations of any provision of this Code have taken place, it shall prescribe an appropriate remedy for such violation(s) including but not limited to the issuance of a citation for a municipal infraction; the imposition of fines; a direction to cease and desist from continuing to act in violation of the provisions of this Code; the institution of injunctive or other appropriate action or proceedings for the enforcement of the orders of the Council or for the correction of such violations as have taken place or for the collection of such fines as the Council may have imposed. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions or other appropriate forms of remedy or relief.

CHAPTER 5

HEALTH AND SANITATION

Section 501. Solid Waste

In adopting this chapter it is the intent of the Council to preserve harmony and good order in the Town. It is designed to enhance the physical appearance of the Town and to promote, rather than to limit, the full use and enjoyment by all residents of their yards and gardens. It is not intended to proscribe activities or to dictate the manner in which each property is used so long as the activities and uses stay within the bounds of what is generally regarded as appropriate to a diverse residential community and a spirit of good-neighborliness.

(a) Definitions. For the purposes of this Section, the following words and phrases shall have the meaning respectively ascribed to them in this Section.

Solid Waste: All waste materials and debris, including, but not limited to: garbage, garden and other refuse; cans, bottles, waste paper and cardboard (except while being collected for recycling); rubble, debris from building construction; industrial waste, sludge; dead animals, bones; abandoned or non-functioning vehicles, machinery, auto parts & tires, appliances, furniture, recreation and other equipment (except items in process of or awaiting repair or renovation); ashes, leaves and sawdust (other than those retained for mulch, soil lightening or other gardening purposes).

Salvable Waste: All materials, not intended or not suitable for use "as is," that are being held for repair or renovation or for conversion into usable

material including, but not limited to: used lumber or other used building material being cleaned, sorted or repaired for re-use; vehicles, machines, appliances, furniture, recreational and other equipment in process of or awaiting repair or renovation; cans, bottles, waste paper and cardboard being accumulated for delivery to a reprocessing facility; ashes, leaves, sawdust or similar materials being saved for garden use; tree trunks, limbs, branches and scrap lumber being saved for use in fireplaces or stoves.

Approved Container: Containers for refuse, ashes, or trash shall be sturdy, metal, or rigid plastic, watertight and equipped with handles and a tight fitting cover.

(b) The Council may license or contract with a contractor to collect and dispose of solid waste under such regulations as to charges and methods as it deems advisable.

(c) **Solid waste** It shall be unlawful for any person:

(1) To dispose of, dump, deposit, or leave any solid waste on public or private property, within the Town.

(2) To throw, dump or deposit any garbage or other solid waste upon the land or property of another or into the approved container(s) for storage of solid waste owned, rented by or maintained by a collector on behalf of another without written consent first having been obtained from the owner or rightfully intended user thereof, or under the personal direction of such owner or rightfully intended user, or to throw, dump, or deposit any garbage or other solid waste upon any public highway or public property in the Town; however, nothing in this Subsection is intended to preclude a public-spirited resident of the Town or other person from placing in the private container of another small amounts of debris or other waste material found in the public ways of the Town.

(3) To store any solid waste within the Town, except as provided in this Section;

(4) To permit the accumulation of solid waste or to let any part thereof to be carried to or deposited on any street, sidewalk or other public place or another person's private property by the elements or by any other means. "Accumulate" shall mean to exist outside of an approved container for more than thirty days.

(d) **Salvable Waste**

(1) Items of salvable waste (as defined herein) being held for repair, renovation, removal or future use shall not be stored so that they are readily visible from the streets or public ways of the Town for more than thirty days, except that in unusual circumstances the period may be extended, at the discretion of the Code Enforcement Officer, to not more

than ninety days. Visibility shall be determined by normal lines of sight, whether the material is stored in front, side or rear yards or upon decks or porches.

(2) Material being saved for gardening use (ashes, sawdust, etc.), if stored in containers or in suitable rear-yard containment areas (such as leaves in a compost pile), and stacked firewood that has been cut to usable lengths shall be exempt from the provision of Subsection (1) above.

(e) Administration of Ordinance

(1) This ordinance shall be administered by the Code Enforcement Official who shall have the authority to grant a waiver of the provisions of this Chapter when there are practical difficulties or undue hardships in carrying out the provisions of this ordinance or other bona fide reasons for granting such a waiver, provided that the spirit and intent of the law shall be observed and the public health, welfare and safety shall be protected. Any decision of the Code Enforcement Official, either to grant or deny a waiver request, may be appealed to the Council pursuant to the provisions set forth in Subsection (f).

(2) Notice of alleged violation of this ordinance may be addressed to the Council, in writing, by residents of Garrett Park. The notice, which should be delivered or mailed to the Clerk-Treasurer, shall give precise details of the nature of the alleged violation, the date or dates of its occurrence, the name (if known) and address of the offending party. The notice must be signed and include the signer's address and telephone number.

(f) Appeals from Orders and Decisions under this Ordinance

The Council shall have full authority to hear testimony and to decide all appeals from decisions or orders of the Code Enforcement Official under this Ordinance. Any person who feels aggrieved by any decision or order of the official made under this Chapter may appeal to the Council at a regular meeting of the Council following such order or decision. Upon notice of and after hearing, the Council shall affirm, modify, or reverse the decision or order of the Code Enforcement Officer.

(g) Penalty

Any violation of any provisions of this Section shall be punishable as a municipal infraction. A violation will be occasioned by the failure of the owner or occupant to remove the offending material or rectify the offending situation within thirty days after formal notification by the Code Enforcement Officer or by whatever later date the Code Enforcement Officer may have set. Each day that a violation shall continue to exist shall constitute a separate offense.

The penalty for the first day of the offense shall be \$50.00; for each succeeding day the offense continues, \$25.00.

Section 502. Littering, Etc., Forbidden

(a) It shall be unlawful for any person or corporation to knowingly or deliberately throw, cast, or deposit upon any street or public way or public property in the Town any ashes, sweepings, garbage, paper, handbills, bottles, trash, vegetable or animal matter of any nature whatsoever, or other types of litter or debris. Leaves deposited on the street, pending their removal as prescribed by Council are exceptions to this Section.

(b) It shall be unlawful for any person, or corporation to throw, cast, or deposit, or cause to be thrown, cast, or deposited in and upon any lot, or premises, whether the same be vacant or occupied, the contents of any privy-box, human excreta, filth, dead animals, putrescible matter, offensive fluids, or any refuse matter, or thing injurious and dangerous to public health.

(c) Violation of the Section is declared to be a municipal infraction. The penalty for each offense shall be \$25.00.

Section 503. Sanitary Regulations

(a) For the purpose of this Section, the word "dwelling" shall include every type of inhabitable structure or shelter, whether permanent or temporary, movable or fixed, and shall specifically include trailers and similar vehicles.

(b) No dwelling or premises shall be occupied by one or more persons unless:

(1) The dwelling or premises is provided with adequate plumbing sanitary facilities complying with all state, County and Town regulations; and

(2) The dwelling is connected with the water and sewer main of the Washington Suburban Sanitary Commission or other provision is made with the approval of the Mayor and Council. Provided, however, that dwellings or premises now occupied and otherwise provided with sewer facilities heretofore approved by the Mayor and Council shall be excepted from the provisions of this Section so long as the present facilities are in satisfactory working order and do not become unsanitary or a detriment to the health of the community.

(c) No person or persons, corporation or corporations, shall construct or maintain any cesspool, privy-sink, or other depository of filth within the corporate limits of the Town except as provided in Subsection (b).

(d) The violation of this Section shall be an infraction, punishable by a fine of \$50.

Section 504. Single – Use Plastics

(a) **Straws:**

- (1) No restaurant, business, vendor, or special event organizer, shall sell, distribute, dispense, or otherwise provide a plastic straw, plastic stirrer, or plastic “splash stick,” except at the request of a customer or attendee who requires such plastic implement to accommodate a disability.
- (2) This prohibition does not apply to beverages with an attached straw, prepared and packaged outside the Town, provided such beverage is not altered, packaged or repackaged within the Town.
- (3) Straws which may be lawfully provided must be made of biodegradable material, such as paper or hay.
- (4) The definition of biodegradable shall be: made of material capable of being broken down into innocuous products by the action of living things (such as microorganisms) including being marine-degradable in water within a one-year period.

Violation of the Section is declared to be a municipal infraction. The penalty for each offense shall be \$100.00

CHAPTER 6

PEACE, ORDER AND SAFETY

Section 601. Disorderly Conduct

No person or persons shall disturb the peace of any citizen or community by willfully committing in a public place, street, sidewalk, public park, parking lot, place of worship, school house, railroad depot, business establishment, shopping center, or public building the disorderly acts of:

- (a) Making loud and unseemly noises or by profanely cursing, swearing or using obscene language within the earshot of persons passing or standing nearby, or
- (b) Catching hold of and soliciting persons against their will, or
- (c) Obstructing or hindering the free passage of persons or vehicles passing through or within these places, or
- (d) Using words or gestures intended to incite others to violent actions, or

(e) Congregating for any unlawful purpose and refusing to clear such a place, move on or disperse when lawfully ordered to do so by a police officer or other lawful authority.

Section 602. Indecent Exposure

(a) It shall not be lawful for any person, or persons, to make any obscene or indecent exposure of his or her person or their persons in any street avenue, road, highway, public park, or space or in any vacant lot or in any enclosure, dwelling, building, or other place wherefrom the same may be seen from any street, avenue, road or highway within the Town.

(b) A violation of this Section shall be a misdemeanor.

Section 603. Vagrancy

Every person who wanders about the Town and lodges in public places or buildings without having any lawful occupation and without having any visible means of support, shall be considered a vagrant and be guilty of a misdemeanor.

Section 604. Alcoholic Beverage Permit Ordinance

(a) Purpose. It is the purpose of this Section to allow for the legal consumption of alcoholic beverages on Town Property at the discretion of the Council as provided for by Article 2B, Section 19-203 of the Annotated Code of Maryland, 1957 edition as amended. Such consumption must be preceded by issuance of a permit.

(b) Town Property is defined as any building or land owned by the Town, including streets and parking areas.

(c) The accepted form of the permit shall be issued by the Clerk-Treasurer.

(d) Violation of this Section is declared to be a municipal infraction. The penalty for each violation shall be \$50.00.

Section 605. Cambria Park and Porcupine Woods Closed After Dark

(a) The park area belonging to the Town (Cambria Park and Porcupine Woods) shall be closed from dark to dawn unless permission to use these parks has been obtained in advance from the Clerk-Treasurer.

(b) A violation of this Section shall be an infraction, punishable by a fine of \$25.

Section 606. Discharge of Firearms

It shall be unlawful for any person to discharge any firearms upon any street, avenue, road, alley, park, or other public place in the Town, or within 25 feet of any such street, avenue, road, alley, park, or other public place in the Town.

Section 607. Illegal for Minors to Carry Firearms

It shall be unlawful for any person under the age of 18 years to carry or have in his possession upon any street, avenue, road, alley, park, or other public place in the Town any loaded gun, pistol, revolver, rifle, air gun, or other dangerous weapon of like character.

Section 608. Unlawful to Hunt and Shoot Rabbits, Squirrels, Birds Etc.

It shall be unlawful for any person or persons to hunt and shoot birds, rabbits, squirrels, or any other game at any time within the corporate limits of the Town.

Section 609. Nuclear Free Zone

(a) The people of this Town hereby declare the Town of Garrett Park to be a Nuclear-Free Zone. No nuclear weapon shall be produced, transported, stored, processed, disposed of, nor used within Garrett Park. No facility, equipment, supply, or substance for the production, transportation, storage, processing, disposal or use of nuclear weapons shall be allowed in Garrett Park.

(b) A violation of this section shall be an infraction, punishable by a fine of \$100.

Section 610. Unlawful to Display or Sell Firearms

It shall be unlawful for any person to display, offer for sale, or sell any firearms upon any town-owned property. [Ord. 2001-02, adopted 03/12/2001]

CHAPTER 7

STREETS AND SIDEWALKS, PUBLIC WORKS

Section 701. Garrett Park Street Construction Code

(a) Sections 701 through 719 shall be known as the Garrett Park Street Construction Code and is sometimes hereinafter referred to as the "Street Code." Any Section of any ordinance passed by the Council that conflicts with the provisions of Sections 701 to 719 or prevents the enforcement of these Sections is hereby repealed.

(b) A violation of any provision of this Chapter shall be an infraction, punishable by a fine of \$100.

Section 702. Definitions

Construction: shall mean construction and reconstruction but not maintenance.

Drainage Structures: include culverts, bridges, storm sewers, catch basins, canals, ditches, sub-surface drains, and any structures or watercourses designed to carry off surface or other waters.

Dwelling Unit: shall be defined as a building or portion thereof arranged for occupancy by not more than one family for living purposes and having cooking facilities; including, but not limited to, single-family detached dwellings, town houses, and apartment units.

Service Street: as used here means any street built to substandard specifications as an exception to the Street Code primarily to expedite traffic from one point to another as opposed to a street designed to service the property facing on it.

Planting Strip: areas shall mean those strips of land in Town rights-of-way which are not paved for vehicular use and which lie between the paved portion of said streets and adjacent private property lines.

Section 703. Payment for Street Repairs

The Council member in charge of streets shall report at each meeting of the Council the work and approximate expenditures contemplated for the ensuing month for authorization.

Section 704. Construction of Streets by Person Other Than the Town of Garrett Park

(a) It shall be unlawful for any person to construct any street which has not been authorized by a permit issued by the Town.

(b) Application for such permits shall be made to the Clerk-Treasurer on such forms as he or she shall prescribe and shall be accompanied in each case by detailed plans, specifications, location and right-of-way plots, bearing the tentative approval of the Washington Suburban Sanitary Commission and the Maryland National Capital Park and Planning Commission, and concerning matters within its jurisdiction, the State Roads Commission.

(c) The Council shall approve the plans and the profiles of the proposed street construction if it finds that the plans are in accordance with all applicable specifications and further that approval is in the interest of the Town as a whole.

(d) The Clerk-Treasurer shall issue a permit to the applicant upon:

(1) Approval by the Council pursuant to Subsection (c) hereof,

(2) Payment of an inspection or engineering fee to the Clerk-Treasurer in the amount of 4% of the estimated total cost of the street construction, and

(3) The delivery to the Clerk-Treasurer of a cash or corporate bond approved by the Council in the full amount of the estimated total cost of the street construction, running to the Town, and conditioned as follows:

(3.1) That the permittee, his or her agents and servants will comply with all applicable terms, conditions, provisions, requirements, standards and specifications of this street Code,

(3.2) That the permittee, his or her agents and servants will faithfully complete the work for which the permit is issued.

(3.3) That the permittee, his or her agents and servants will save harmless the Town from any expense incurred through the failure of the permittee, his or her agents and servants to complete the work as required by this street Code, or from any damage growing out of the negligence of the permittee, his or her agents or servants.

(3.4) If a corporate bond is offered, it shall be executed by a surety or guaranty company qualified to transact business in the State of Maryland.

(3.5) If a cash bond is offered, it shall be deposited with the Clerk-Treasurer of the Council, who shall give his or her official receipt therefor, reciting that said cash has been deposited in compliance with and subject to the provisions of this Chapter.

(e) Such permits shall not be transferable and shall be invalid if any provision thereof is violated. Such permit shall automatically expire six months from date of its issuance unless extended by the Council upon continued compliance with paragraph (d) above.

(f) No extension shall be granted unless the bond filed with the permit by its terms continues in full force and effect or a new bond is filed.

(g) Irrespective of plans and specifications accompanying the application, the actual construction shall conform to law and to the minimum requirements for a street of its class.

(h) There shall be an inspection of the street construction at each of the following inspection points: (1) upon completion of grading; (2) upon laying of the ballast; and (3) upon completion of the street construction. No work shall progress beyond any inspection point prior to inspection and approval by the Council or the agent designated by the Council. Notice of the completion of any of the inspection points shall be given to the Council at least 24 hours in advance of the time at which the inspection is to be made. If the Council determines upon the basis of the inspection report that the street construction fails to conform to the plans, specifications and to the minimum requirements established by this article, it shall provide the permittee and his or her surety, where a corporate bond has been posted,

with a written notice describing in detail the nature of the default and directing that the construction be made to conform with the requirements within such reasonable time as the Council may specify. If the permittee fails to comply, the Council may, after notice to the permittee and his or her surety, if any, revoke the permit and complete the street construction at the expense of the permittee, charging the bond thereof.

(l) If the permittee fails to complete the street construction within the life of the permit, the Council may, after notice to the permittee and his or her surety, if any, complete the street construction at the expense of the permittee, charging the bond for it.

Section 705. Acceptance by Council

(a) Upon completion of any street construction pursuant to Section 704 the Town Council shall, within a reasonable time, determine upon the basis of the final inspection report whether the street construction conforms to the requirements of this Chapter.

(b) If the Council finds that the street construction is acceptable, it shall, by resolution in open session, accept the street as part of the Town street system to be maintained by the Town at its expense. The cash or corporate bond shall thereupon be released.

(c) If the Council finds that the street construction fails to conform to the requirements of this Article, it shall reject the street by written notice to the permittee and his or her surety, where a corporate bond has been posted, specifying the reasons for the rejection and directing the permittee or his or her surety to take the necessary steps to repair the default within such reasonable time as the Council may specify. If the permittee or his or her surety does not thereafter within the time specified, complete the construction according to the provisions of this Chapter, then the Council through its duly authorized representative shall forthwith proceed to do whatever is necessary to cause the said construction to comply with this Article and the permittee and his or her bond shall thereupon be liable for any expense incurred thereby.

Section 706. Obstruction of Streets

(a) It shall be unlawful for any person to tear up, dig into or under or in any manner obstruct any street or right-of-way unless pursuant to a permit issued by the Clerk-Treasurer. Any person engaged in lawful parking, loading or unloading or emergency repair of a vehicle or any person awaiting emergency repair or towing service for a vehicle shall not be deemed to be obstructing a street within the meaning of this Section.

(b) The Clerk-Treasurer may issue a permit for such reasonable periods of time as may be necessary to the person(s) to conduct any activity which the Council member in charge of the Streets finds will require the tearing up, digging into or under, or temporary obstruction of a street or right-of-way and may require a deposit equal to the estimated cost of restoration of the street or right-of-way to its former condition.

Each such permit shall expressly describe the nature and extent of the tearing up, digging or obstruction of the public street or right-of-way which the Council member in charge of the streets finds necessary. Any person, firm, or corporation obtaining such a permit shall upon completing the operations specified in said permit restore the street or right-of-way to a condition equal to or better than its condition at the time the operations were begun.

(c) When the Council member in charge of the Streets is satisfied that the Street has been restored to a condition equal to or better than its condition at the time operations under a permit issued under Subsection (b) above were begun, the Clerk-Treasurer, upon his or her direction, shall refund the deposit.

Section 707. Construction of Streets by the Town

(a) If it appears that the public interest may require the Town to construct any Street, the Council shall propose the particular construction by adopting a resolution which shall specify the location, extent and kind of construction proposed, the type of materials to be used, the estimated cost, and a description of the real property that there is reason to believe will be specially benefited thereby.

(b) Said resolution shall provide for a public hearing on the proposal and shall state the time and place where such hearing will be held. A copy of this resolution shall be sent by registered mail, at least two weeks before the scheduled date of the hearing, to the owners of the property abutting the proposed construction as listed in the records of the clerk. A summary of said resolution shall be published twice in a newspaper of general circulation published in Montgomery County with a statement directing where a full copy of the text of the resolution may be obtained. Any interested person shall be entitled to appear and be heard at said hearing.

(c) If, after the hearing, the Council shall find that the public interest requires that the proposed construction or any portion of it shall be carried out, it shall be by an additional resolution authorized by the Mayor to proceed with such construction or portion thereof in conformity with this Chapter. The resolution shall describe the work to be done and shall specify what portion of the cost of the construction shall be borne by the abutting property and what portion, if any, of such cost shall be borne by the Town in accordance with the provisions of this Chapter.

Section 708. Assessments of Benefits

(a) Upon completion of any street pursuant to Section 707, the Council shall by ordinance assess the cost of the project, including but not limited to the actual cost of publication of notices, the conduct of hearing, advertising for bids, engineering, construction, rights-of-way acquisition, legal expenses, and all costs of financing incurred prior to the ordinance, against all property abutting the street on the basis of linear frontage in an amount not to exceed the amount by which such property is specially benefited by the construction, or on some other equitable basis.

(1) In the case of the reconstruction and rebuilding of a street, which has been accepted for maintenance or is being maintained by the Town, such cost shall be limited to the cost of such gutters, sidewalks, and driveway entrances as may be constructed.

(2) In the case of any street which has not previously been accepted for maintenance or which is not being maintained by the Town, the cost shall include such portion of the cost of grading, drainage structures, curbs and gutters, sidewalks, returns of curbs, sidewalk and driveway entrances and paving as the Council finds to be of benefit to the abutting property.

(3) In all cases where the property to be assessed for construction hereunder is located at the intersection of two or more streets and is what is known as a corner lot, the linear frontage of such corner lot to be assessed in connection with the construction of each street abutting thereon shall be reduced to one-half of the total frontage of said lot upon the street. However, such reduction shall not exceed fifty feet on any one street. The portion of the cost of the construction which would otherwise have been assessed to such corner lots shall be added to the overall cost assessed to the remaining assessable frontage of the whole project, or, in the discretion of the Council, may be paid for in whole or in part by the Town.

(4) Property owned by the United States, the State of Maryland, or any governmental agency thereof, shall not be assessed for any portion of such cost of construction.

(5) Assessments shall be due and payable upon adoption of the ordinance, provided that the Council may provide in such ordinance that such assessments may be paid in not more than ten equal installments. All assessments shall bear interest from the date of such ordinance, except as hereinafter provided, at the rate of 5% per annum. When such ordinance is adopted, it shall provide that the first installment shall be due and payable upon the first day of the first month of the quarter of the year second after the quarter in which such ordinance is adopted. Each subsequent installment shall be paid annually on the same corresponding day of each year thereafter until the entire amount is paid. Upon the payment of each installment, including the first, interest shall be paid on the unpaid balance of the assessment computed to the due date of the installment, provided that no interest shall be charged upon any amount paid within three months after the assessment is made, and provided further that if any installment together with the interest thereon is not paid within ninety days following its due date, there shall be charged a penalty of one-half of 1% on such installment and interest for each month thereafter that the same remains unpaid.

(6) Assessments made hereunder shall be collected in the manner in which ordinary taxes are now, or hereafter may be, collected under the provisions of the federal and local laws of the State of Maryland and Montgomery County. Upon default in the payment of any assessment the property against which any such assessment has been made shall be sold at tax sale in the same manner as real property is sold for non-payment of ordinary taxes. Upon default in the payment of any installment of an assessment, the assessed property shall be sold at tax sale for the entire unpaid balance of the assessment and interest due thereon, together with all other taxes, charges and interest due thereon, if any. The entire unpaid balance of such assessment is hereby declared to be immediately due and payable upon the day of such sale.

(7) Whenever through error, inadvertence, or oversight, any property subject to assessment hereunder has not been properly assessed, or such assessment has erroneously described the property or is made in a wrong name, is in an erroneous amount or where service upon the property owner has not been made, the Council may, upon discovery of such error, inadvertence, or oversight, correct the assessment by amendment of the ordinance. This may be done without further notice to the property owner or owners affected thereby, provided that such property owner or owners had notice of the hearing conducted pursuant to Section 707 and the error, inadvertence or oversight did not occur prior to the date of such hearing and was not contained in any notice thereof; however, if such error, inadvertence or oversight, occurred prior to such hearing or was contained in any notice thereof, it shall not be corrected unless the property owner or owners affected by such correction are given adequate notice and an opportunity to be heard.

Section 709. Waiver and Modification

(a) The Council may, by resolution in open session waive or modify any of the requirements here for good cause shown.

(b) Wherever it appears that an assessment of the entire benefit against the abutting properties is, for any reasons, inequitable, the Council may, by resolution in open session, reduce the amount of benefit to be assessed. In such event the Town will pay the amount represented by the reduction.

Section 710. Construction of Temporary Sidewalks

Whenever it appears to be in the public interest to construct a temporary sidewalk, the Council may, by resolution in open session, authorize the Mayor to proceed with such construction at the expense of the Town.

Section 711. Width of Streets

Any street constructed after April 13, 1970, within the limits of the Town shall have a minimum right-of-way of 60 feet. Paving within any such street shall be not less than 26 feet wide except when reconstructing existing streets, in which case the reconstruction may not be less than the average width of the existing pavement for the length of the reconstruction. Where any street constructed after April 13, 1970 provides access to more than seven dwelling units and is not a through street, said street shall include a cul-de-sac having a minimum right-of-way of 120 feet in diameter in its circular section, and its paved portion of which shall be not less than 86 feet in diameter; provided, however, that nothing herein shall preclude the construction of a landscaped island not exceeding 24 feet in diameter in the middle of any such cul-de-sac.

Section 712. Parking and Access Driveway Facilities

(a) Location of parking and access driveway facilities shall be selected to provide maximum safety for pedestrians, for street traffic, and for users of the driveway facilities.

(b) Finished grades for construction and reconstruction of said driveway facilities shall be set to contain stormwater within the street and facilitate its flow along the gutter line of the street as projected directly across the driveway.

(c) The Town will assist in the construction of access and parking driveway facilities by furnishing standards for finished grades and by reimbursing the party installing a driveway for the approximate cost of paving that portion extending the first 4 feet back from the edge of street pavement, with the actual amount of reimbursement to be calculated at a rate which the Council shall from time to time set as being fair and equitable; or

(d) The Town may assist by installing the entire driveway pavement when the Council or its duly appointed agent finds that it is convenient to do so as part of a larger paving project of the Town, provided that the Town is requested to do so by the owner of the land served by the driveway, and provided that the owner agrees to reimburse the Town for all expenses incurred by the Town in installing the driveway other than for that portion extending the first 4 feet back from the edge of street pavement, and further provided that the owner agrees to save harmless the Town and its duly appointed agents and employees against any action for personal injury or property damage sustained by reason of the exercise of this driveway installation assistance.

(e) The Clerk-Treasurer is directed to establish and maintain records in sufficient detail to administer the development of all access and parking driveway facilities in conformance with the principles and policies established herein, and that approval of driveway locations and grades shall be made by the Council or its duly appointed agent.

(f) Nothing in this Section shall be construed as limiting any of the basic rights of the Town to use and control the Town right-of-way.

Existing from previous Code

Section 713. Service Streets

All new construction on any street in Garrett Park which was constructed as a service street, width not in excess of 20 feet or less, and contiguous to existing pavement, shall provide parallel parking space on the right-of-way, the surface consisting of compacted gravel or paved surface of a depth not less than 4 inches of asphalt or other like material. In the event the property owner fails to provide the foregoing within 60 days after notice from the Town, the Council may itself proceed to construct the off-street parking and assess the cost of it against abutting property after notice.

Section 713. Garrett Park Off – Street Parking Ordinance

- (a) It is the purpose of this Ordinance to ensure adequate provision for off-street parking within the Town in order to prevent further constriction and congestion of streets within the Town as a result of the use of said streets for parking of automobiles and other motor vehicles.
- (b) Dwelling Unit shall be defined as a building or portion thereof arranged for occupancy by not more than one family for living purposes and having cooking facilities; including, but not limited to, single-family detached dwellings, town houses and apartment units.
- (c) There shall be provided at the time of the erection of any new dwelling unit within the Town a minimum of two off-street parking spaces for each such dwelling unit, with adequate provision for ingress and egress by standard size motor vehicles.
 - (1) Each parking space shall be not less than 180 square feet in area, with a minimum design of 9 feet by 20 feet. Access driveways shall be not less than 10 feet wide, except where such driveways serve five or more dwelling units, in which event such driveways shall not be less than 20 feet wide.
 - (2) Designs and plans, including drainage, shall be subject to inspection and approval by the Town's building inspector.
- (d) The Council is authorized to grant variances from the strict application of this ordinance when by reason of exceptional narrowness, shallowness or shape of specific parcels of property, or by reason of exceptional topographical conditions, or other extraordinary situations or conditions of specific parcels of property, the strict application of this ordinance would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

Section 714. Specifications for Street Construction

The construction of all roads shall conform to the minimum requirement standards and specifications established by Montgomery County design standards and Montgomery County standard specifications, except as herein provided.

(a) Where there is a 50 feet dedicated right-of-way, the Council may, in its discretion, authorize the construction of a paved street less than 26 feet wide, and may authorize 6 inches of compacted bank gravel in place of eight inches of compacted bank gravel as required by the Montgomery County Code. The width of the street shall, unless otherwise authorized, measure not less than 26 feet, measuring from face of one curb to the face of the curb directly across the street, and shall include standard concrete curb and gutters, as specified in Montgomery County Road Construction Code, Section 49 of the 1984 Montgomery County Code as amended and shall conform to Montgomery County Road Construction Code regarding the type of material used and method of construction.

(b) All grading shall be done in accordance with plans and profiles approved by the Council, and the Montgomery County Road Construction Code as it appears in the 1984 Montgomery County Code, as amended.

(c) Whenever drainage structures are required for any road, such drainage structures shall be installed or constructed as are found by the Council to be necessary or appropriate.

Section 715. Landscaping, Maintenance and Use of Planting Strip of Town Streets

(a) Residents of the Town whose property abuts Town streets dedicated for public use may landscape and maintain the unpaved street areas abutting their properties in accordance with the following standards and regulations:

(1) Landscaping may include the planting of grass, groundcover, flowers, and shrubs.

(2) On corner lots, no shrubs or planting of any kind exceeding 3 feet in height when fully grown shall be planted within 20 feet of the return of the curb line on said corner.

(3) In no case shall the unpaved street area of any Town street be landscaped in any manner that will inhibit or impede pedestrian use of a 5 foot wide walkway, sidewalk or pathway; provided, however, that this restriction shall not preclude the planting of grass or the laying of a brick walk or flagstone in such area.

(b) The planting, maintenance and removal of trees in the unpaved street areas dedicated to public use shall be the responsibility of the Council and trees may be planted in or removed from such an area only with the explicit consent of the Council.

(c) No person who landscapes or otherwise maintains an unpaved street area dedicated to public use abutting his property shall be entitled to any right, title or

interest in said dedicated right-of-way nor to any remuneration from the Town because of monies expended for landscaping, and, in the event it becomes necessary to widen or otherwise improve any Town street dedicated to public use or to construct paths or sidewalks and thus to remove or destroy the trees, shrubs or other landscaping within the said area, no compensation shall be paid by the Town for such relocation or destruction of existing landscaping.

(d) Nothing in this section shall be construed as permitting, without the specific consent of the Council, the construction of buildings, fences or facilities on the unpaved street area of any Town street or the use of any such area as a public play or recreation area.

(e) Waiver. The Council may waive or grant variances from the strict application of this Section, subject to such conditions as the Council may impose, when, because of the exceptional shape of specific parcels of land or because of exceptional topographical conditions or other extraordinary situations or conditions affecting specific parcels of property, the strict application of these regulations would result in a peculiar and unusual practical difficulty to or exceptional or undue hardship upon the owner of any specific parcel.

Section 716. Preservation of Trees and Shrubbery

(a) No person shall break, wound, destroy, or in any manner injure any of the trees or shrubbery now planted and set or which may hereafter be planted and set, on any of the streets, parks, or public recreation areas in the Town.

(b) If any person (resident or others) shall receive from the Department of Natural Resources a permit to remove or prune a tree in the unpaved street area dedicated to public use, said person shall notify the Clerk-Treasurer, ten (10) days before work begins, by sending a copy of the permit to the Town office. Replacement must be on the Town's approved list, must be done at resident's own expense, and must be within six months after the tree is removed. Failure to comply with this Section shall be an infraction, punishable by a fine of fifty dollars (\$50).

Section 717. Garrett Park Arboretum and Arboretum Committee

(a) Statement of Policy

(1) History. The plan of the Town of Garrett Park was designed by William Saunders in the 19th Century to reflect the Town's sylvan setting and preserve existing woodland. Over the years, the Town has expressly recognized its distinctive arboreal resources and has taken steps to protect those resources. One of the earliest laws of the Town - Ordinance #4, enacted May 27, 1897 -- concerns preservation of trees and shrubbery. More recently, the Town purchased land that was threatened by excessive development and established the Town as an Arboretum, including approval of a citizens advisory committee to initiate the Arboretum.

(2) Purpose. To formalize the establishment of the Town as an Arboretum and to organize the Arboretum Committee.

(b) The Arboretum

(1) There is hereby created the Garrett Park Arboretum, hereinafter known as the Arboretum.

(2) The Arboretum shall consist of all trees, shrubs, woody plants, and other herbaceous material planted or maintained by the Town on any and all public land owned by the Town, including but not limited to such material in parks, playgrounds, rights-of-way, and lands leased by the Town to others, together with such property (whether or not owned by the Town) for which the Town may from time to time have maintenance responsibility.

(c) The Committee

(1) There is hereby created a Garrett Park Arboretum Committee, hereinafter known as the Committee.

(2) The Committee shall consist of no more than seven (7) citizen members and a member of the Council.

(3) The Mayor shall appoint, with the approval of the Council, members of the Committee from among Town residents who have lived in Garrett Park for at least one year and who are qualified by special interest, knowledge, experience or training in such fields as horticulture, botany or related natural sciences, landscape architecture or design, ecology, conservation, or complementary disciplines. If feasible, one member of the Arboretum Committee shall be drawn from the membership of the Historic Preservation Committee established by Section 400 of this Code. Members shall be appointed for a term of five years, except that in making initial appointments, some appointments shall be for less than five years so that no more than two (2) terms shall have simultaneous expiration dates. The Mayor shall appoint the Council member who has responsibility for trees, and that member's term on the Committee shall be concurrent with the member's Council term, so long as the member retains the Council assignment for trees. Vacancies on the Committee that are created by the resignation or other discontinuation of a member prior to the expiration of the member's term shall be selected by the Mayor for the unexpired term of the replaced member. A member may be removed for failure to attend meetings regularly or misconduct.

(4) The members of the Committee shall serve without compensation, but they may be reimbursed for actual expenses incurred in the performance of their duties, provided such expenses are approved by the Council.

(5) The Town shall provide in its annual budget such funds as may be required for the operation of the Committee.

(6) The Chair and Vice-Chair shall be elected by the members of the Committee. The Committee may adopt such procedural rules as may be necessary or appropriate for the conduct of its business. The Committee may create a category of adjunct Committee membership to be comprised of no more than five persons, not residents of Garrett Park, whose participation on the Committee, by virtue of academic, professional or other qualification in the fields specified in Section 3.3, above, benefits the Committee and Town.

(d) Powers of the Committee

(1) The Committee, in conformity with the policy set forth in this Section of the Code, shall advise the Council with respect to all issues involving or affecting the Arboretum and its resources.

(2) The Committee may, from time to time, in coordination with the Council member with responsibility for trees, undertake educational initiatives to advance the understanding and appreciation of the Arboretum and on the other horticultural matters of general interest in the Town.

Section 718. Bell Atlantic Telephone Company

(a) Permission is hereby granted to the Bell Atlantic Telephone Company, its successors and assigns, to construct, reconstruct, maintain, and operate its posts, poles, cables, wires and all other necessary overhead apparatus, on over and along the streets and highways within the limits of the Town.

(b) All poles erected by said company shall be neat and symmetrical and shall be so located as in no way to interfere with the safety or convenience of persons traveling on or over the said streets and highways. All work shall be done under the supervision of the Council member in charge of streets. The company shall, at its own proper cost and expense, replace and properly relay that portion of any sidewalk or street pavement which may have been misplaced or damaged by it in the construction or maintenance of its above-mentioned lines. The company shall maintain all poles, cables, wire and other apparatus erected or constructed under the provision of this Section in good and safe order and condition; and shall at all times fully indemnify, protect and save harmless the said Town from and against all actions, claims, suits, damages and charges, and against all loss and necessary expenditures arising from the erection, construction and maintenance of its line aforesaid in the Town or from its neglect or failure to maintain said apparatus in good and safe order and condition.

(b) Nothing in this ordinance shall be construed to grant to the said Bell Atlantic Telephone Company any exclusive right or to prevent a grant of similar privileges to other companies.

(c)

Cross Reference: See Chapter 12 (concerning the regulation of small wireless telecommunications facilities)

* * *

Section 719. Excavations by Public Utilities

(a) Public Utility -- A public utility shall be defined as a privately owned and operated business whose services are so essential to the general public as to justify the grant of special franchises for the use of public property or of the right of eminent domain, in consideration of which the owners must serve all persons who apply, without discrimination.

(b) All cuts and excavations in the sidewalks, gutters, streets, alleys, roads, highways and other public places in the Town made by Public Utilities shall be filled in by them as soon as practicable. Wherever the hard surface or surfaces of streets are cut by them to install gas piping, these cuts shall be back-filled by them and allowed to remain in this condition until the earth or fill has properly settled, or puddling may be done. In any case, after a reasonable time the top of this fill shall be removed by them down to a depth corresponding to the thickness of the hard surface and the space filled with hard material mixed with an approved binder, restoring the surface to the same condition as it was prior to the time when the said cuts or excavations were made. Wherever drain piping, culverts, gutters, etc., are disturbed by Public Utilities during this operation, such items shall be suitably replaced by them using old material, if practicable, but if damaged or found not usable the Public Utility shall supply and install at its own expense suitable new material. Wherever the Public Utility shall cut the parking surface or surfaces the Public Utility shall properly backfill these cuts and allow such cuts to settle for a reasonable time, after which sod shall be replaced on such cuts by the Public Utility to restore such cuts topping cement or concrete walks, dries, etc., broken by said Public Utility for any purpose, the cuts shall be back-filled by said Public Utility in the manner described before and the concrete base replaced to the same thickness as existing prior to the time when the cuts were made and all topping of the square so cut shall be removed and new topping neatly laid.

(c) A Public Utility shall notify the Town of any work which is being undertaken within the Town limits and shall apply for a permit. The Public Utility shall be responsible for making any needed repairs to restore the surface of the streets and other public places in the Town which are disturbed by the Public Utility's operations.

(d) All excavations made by a Public Utility shall be properly protected and guarded to avoid accidents and shall be suitably marked by red lights at night.

(e) The Public Utility shall indemnify and hold harmless the said Town from any and all claims of any nature against said Town arising from or out of the excavation and installations permitted here and will reimburse the Town for any loss or expense, including attorneys' fees, incurred by the said Town in the defense of any claim arising out of said excavations and installations.

(f) These provisions shall inure to the benefit of and bind the successors and assigns of a Public Utility.

Cross Reference: See Chapter 12 (concerning the regulation of small wireless telecommunications facilities)

Section 720. Sidewalk maintenance

Owners of property and occupants of dwellings, commercial buildings and public property shall clean any sidewalk adjoining their property; keep it free from overhanging shrubbery; and within 24 hours of a snowfall or freeze, remove ice and snow to the extent necessary to provide reasonably safe pedestrian use, or when this is not practicable, spread sand on the ice and snow to provide reasonably safe pedestrian use.

[Ord. 2000-02, adopted 12/11/2000]

CHAPTER 8

TRAFFIC AND PARKING

Section 801. Traffic and Parking Regulations

- a) The Town Manager is authorized and has the responsibility to implement via regulation temporary or permanent traffic controls, parking restrictions, and road closures on the Town's streets and lands as required to
 - (1) assure the public good, safety, and convenience;
 - (2) facilitate road or utility construction, maintenance, and repair;
 - (3) assist in the provision of public services such as trash and recycling collection, street cleaning, leaf removal, vegetation management, or emergency services in the Town right – of – way;
 - (4) enable construction, maintenance and repair in the Town right – of – way;
 - (5) accommodate weather conditions and special events.
- b) The Town Manager shall prepare in writing proposed regulations or amendments to previously published regulations for permanent traffic or parking restrictions or street closures. The Town Manager shall circulate the proposed regulations to the Mayor and the members of the Town Council and shall provide public notice of the proposed regulations. The proposed regulations shall take effect one week following such public notice unless a councilmember requests that the proposed regulation be discussed at the next regular Town Council meeting. The Town Council may by majority vote direct the Town Manager to modify or delete any or all of the proposed regulations. The Town Manager shall codify and make available to the public

all regulations.

- c) The Town Manager shall exercise his discretion to regulate traffic of parking temporarily should public safety, an emergency or short term temporary events so require.
- d) The Town Manager shall erect as appropriate traffic control and parking signs and/ or other devices to implement such regulations and to the extent practicable, shall post notices of temporary parking or traffic restrictions or closures by signage on streets and areas affected. (Ord. 2017-5: 06/12/2017)

Section 802. Enforcement

- a) The Town Manager and his or her designees shall have the authority to enforce permanent parking restrictions by issuing citations to the vehicles of violators. The Town Manager shall have the authority to enforce temporary parking regulations by having vehicles that are in violation of such restrictions towed to a location as close to its original location as possible within the Town. At the Town Manager's discretion, the expense of such towing may be borne by the Town or may be charged to the owner of obstructing vehicle.
- b) The Town Manager shall prepare in writing a proposed schedule of fines for violation of permanent traffic control and parking restrictions. Such violations shall constitute municipal infractions.
- c) The Town Manager shall promptly circulate the proposed schedule of fines to the Mayor and the members of the Town Council and shall provide public notice of the proposed schedule of fees. The proposed schedule of fines shall take effect one week following publication of such public notice unless a councilmember requests that the proposed schedule of fines be discussed at the next regular Town Council meeting. The Town Council may by majority vote direct the Town Manager to modify the fines. The Town Manager shall codify and make available to the public the schedule of fines. (Ord. 2017-5: 06/12/2017)

Section 803. Parking of Commercial Vehicles

No commercial vehicle, truck, conveyance, trailer, or bus may be parked on the streets of the Town, except when actually loading or unloading merchandise, or when the operator or owner of such vehicle is actually engaged in rendering a service at or to premises. Violation of this Section is declared to be a municipal infraction. The penalty for violation shall be \$25 for each initial offense and \$50 for each repeat offense. (Ord. 2017-5: 06/12/2017)

Section 804. Speed of Motor Vehicles

No person shall drive a vehicle on a street under the jurisdiction of the Town at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards existing. In every event, speed shall be controlled as necessary to avoid colliding with any person, vehicle, or other conveyance on or entering such streets in compliance with legal requirements and the duty of all persons to use due care; provided, however, that no person shall under any circumstances drive a vehicle on said streets at a speed greater than 20 miles per hour.

[Ord. 2006-04: 01/08/2007, Ord. 2017-5: 06/12/2017]

CHAPTER 9

MUNICIPAL INFRACTIONS

Section 901. Definitions

Infraction. An infraction is any violation of this Code, which violation has been specifically declared to be an infraction. For purposes of this Code, an infraction is a civil offense.

Misdemeanor. A Misdemeanor is:

(a) A criminal offense, not amounting to a felony, arising from a violation of a law of the State, which violation is defined as a misdemeanor, or

(b) Unless otherwise specified, a violation of any law of this Town. All violations of this Code shall be treated as misdemeanors unless specifically declared to be an infraction.

Section 902. Declaration as Infraction; Penalty

The Council shall by official act declare the violation of certain ordinances to be either a municipal infraction or a misdemeanor and may declare a penalty for each such violation. (Ord. 2017-5: 06/12/2017)

Section 903. Issuance of Citation

The Town Manager and his or her designee shall have the authority to issue a citation or citations to any person or vehicle. A copy of the citation shall be retained by the Town and shall bear the certification of the enforcing official as to the accuracy of the matter set forth in the citation. The citation shall contain at a minimum the following information:

- a) Name and address of the person charged or license plate information of a vehicle violating parking regulations;

- b) The nature of the infraction;
- c) The location and time that the infraction occurred or was observed;
- d) The amount of the infraction fine assessed;
- e) The manner, location, and time in which the fine may be paid to the Town;
- f) The right of the accused to stand trial for the infraction; and
- g) The effect of failing to pay the assessed fine or demand a trial within the prescribed time. (Ord. 2017-5: 06/12/2017)

Section 904. Payment of Fine

The fine for an infraction shall be as specified in the ordinance or regulation violated. The fine is payable by the recipient of the citation to the Town within 20 calendar days of receipt of the citation. (Ord. 2017-5: 06/12/2017)

Section 905. No Formal Hearing by Town

The Town shall not conduct any formal hearing for those persons in receipt of a citation of infraction. Any offender so cited may pay the fine as indicated in the citation or elect to stand trial for the offense. This provision shall not prevent an offender from requesting, either personally or through an attorney, additional information concerning the infraction.

Section 906. Election to Stand Trial

A person receiving the citation for an infraction may elect to stand trial for the offense by notifying the Town in writing of his or her intention of standing trial. The notice shall be given at least 5 days prior to the date of payment as set forth in the citation. Upon receipt of the notice of the intention to stand trial, the Town shall forward to the district court having venue a copy of the notice from the person who received the citation indicating his intention to stand trial. Upon receipt of the citation, the district court shall schedule the case for trial and notify the defendant of the trial date. All fines, penalties, or forfeitures collected by the district court for violations of infractions shall be remitted to the general fund of the Town.

Section 907. Failure to Pay Fine

If a person receiving a citation for an infraction fails to pay the fine for the infraction by the date of payment set forth on the citation and fails to file a notice of his or her intention to stand trial for the offense, a formal notice of the infraction shall be sent to the offender's last known address. If the citation has not been satisfied within 15 days from the date of the notice, he or she shall be liable for an additional fine not to exceed twice the original fine. If after 35 days the citation has not been satisfied,

the Town may request adjudication of the case through the district court. The district court shall promptly schedule the case for trial and summon the defendant to appear.

Section 908. Conviction Not a Criminal Offense

Conviction of a municipal infraction, whether by the district court or by payment of the fine to the Town, is not a criminal conviction for any purpose, nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction.

Section 909. Court Proceedings and Rights of Accused

In any proceeding for a municipal infraction, the accused shall have the same rights as for the trial of criminal cases. He or she shall have the right to cross-examine witnesses against him or her, to testify or introduce evidence in his or her own behalf and to be represented by an attorney of his or her own selection and at his or her own expense.

CHAPTER 10

MISCELLANEOUS

Section 1001. Due Date for taxes

Property taxes are due and payable on the first day of July in the year in which they are levied and may be paid without interest on or before September 30 of the tax year. However, for owner occupied residential property, property taxes may be paid on a semi-annual schedule as follows: one half due and payable on July 1, which may be paid without interest on or before September 30 of the tax year, and one half due and payable on December 1, which may be paid without interest on or before December 31 of the tax year. [Ord. 2001-04, adopted 6/11/2001]

Section 1002. Interest and Penalty for Delinquent Taxes

A penalty of 1% per month or any fraction of a month shall be imposed for the late payment of all ordinary taxes and other charges collectible in the same manner as ordinary taxes. Interest shall be charged at the rate of 2/3 of 1% per month or any fraction of a month for the late payment of all ordinary taxes and other charges collectible in the same manner as ordinary taxes. Montgomery County is authorized, empowered, and directed to collect this penalty and interest on behalf of the Town in the same manner as collection of ordinary taxes. [Ord. 2001-05, adopted 6/11/2001]

CHAPTER 11

CABLE COMMUNICATIONS

Section 1101. Adoption of County law

Chapter 8A of the Montgomery County Code (1984) as amended, entitled "Cable Communications," is hereby adopted, incorporated by reference and enacted as the cable communications ordinance of the Town with the additions and amendments as set forth in this chapter. All of the rights of Montgomery County as set forth in Chapter 8A shall also be held by the Town of Garrett Park for that portion of any cable communications system within the Garrett Park Town boundaries.

Section 1102. Sections added

Chapter 8A of the Montgomery County Code (1984), as amended adopted by this chapter, is hereby amended by adding the following additional sections:

(a) Section 8A-3(w)(1). "Town" means the Town of Garrett Park, Maryland, an incorporated municipality. Notwithstanding anything to the contrary contained herein, the corporate area of the Town of Garrett Park shall be included within the geographical areas of the County to which this law applies.

(b) Section 8A-6(e). Approval by the Town of Garrett Park. Whenever in this chapter the approval of the County is required, a franchisee shall also be required to obtain the approval of the Town of Garrett Park for that portion of the franchise within the Town boundaries, which approval shall not be unreasonably withheld.

(c) Section 8A-10(e). Indemnity. A franchisee must, at its sole cost and expense, indemnify, hold harmless, and defend the Town of Garrett Park, its officials, boards, commissions, agents and employees against any claims, suits, causes of action, proceedings and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its cable system regardless of whether the act or omission complained of is authorized, allowed or prohibited by the franchise. This requirement includes claims arising out of copyright infringement or a failure by the franchisee to secure consent from the owner, authorized distributor, or licensee of a program to be delivered by the cable system.

(d) Section 8A-17(d)(1). Relocation of facilities. The Town of Garrett Park shall have the same right to require relocation of facilities within the Town as the County has pursuant to section 8A-17(d).

(e) 8A-30(d). Termination of County authority. In the event authorization to the County to administer or enforce the franchise effective within the Town is terminated, the Town of Garrett Park shall have all of the rights otherwise reserved to the County under this ordinance. Notwithstanding anything to the contrary contained herein, the Town of Garrett Park reserves the right to exercise the power of eminent domain to acquire the property of any cable communications system, and to own and/or operate such system.

(f) Section 8A-22(j). No requirement to renew. Nothing in this ordinance or any franchise shall require renewal of any franchise by the Town nor shall renewal be presumed.

(g) Section 8A-22(k). In case of non-renewal because of unsatisfactory performance as determined by the County or the Town of Garrett Park, compensation for the existing value of installations shall be as provided in the franchise agreement. The Town of Garrett Park, with the approval of the Town Council, shall have the option to purchase all assets or property of the franchisee at depreciated value.

(h) Section 8A-22(1). Where the franchisee has performed to the satisfaction of the County and the Town, but the franchise is not renewed for public interest reasons other than dissatisfaction with performance, the Town, with the approval of the Town Council, shall have the option to purchase the system at fair market value.

Section 1103. Sections amended.

Chapter 8A, Sections 8A-29(c) and 8A-29(d), of the Montgomery County Code (1984), as amended, adopted by this chapter, are hereby amended to read as follows:

(a) Section 8A-29(c). The following actions must be approved by the Town Council:

- (1) Granting or renewing a franchise;
- (2) Approving a transfer of a franchise;
- (3) Revoking a franchise;
- (4) Buying or selling a cable system within the Town by the County; and
- (5) Modifying a franchise agreement in a manner that substantially alters material provisions of the franchise.

(b) Section 8A-29(d). The Town Council may approve any of the foregoing actions by resolution.

Section 1104. Regulations

(a) All regulations now adopted by the County Executive for Montgomery County pursuant to the authority contained in Chapter 8A of the Montgomery County Code (1984) as amended, are hereby incorporated by reference and shall be deemed to be effective within the Town, unless such regulations conflict with this Code or regulations established by the Town of Garrett Park.

(b) All regulations or amendments to regulations hereafter adopted by the County Executive for Montgomery County pursuant to the authority contained in Chapter 8A of the Montgomery County Code (1984), as amended, shall become

effective within the Town upon the effective date thereof unless a regulation or an ordinance shall be adopted by the Town Council disapproving such amendments or unless such County regulations conflict with this Code or regulations established by the Town of Garrett Park.

Section 1105. Authorization to administer and enforce

The County is hereby requested and authorized to administer and enforce the cable communications ordinance of the Town and any franchise granted by the Town Council, within the corporate limits of the Town, as fully and to the same extent as the County enforces and administers Chapter 8A and any franchise which is effective in the unincorporated area of the County.

Section 1106. Other ordinances

Nothing herein shall in any way be construed as exempting the franchisee from compliance with any other applicable ordinance of the Town now or hereafter enacted.

Section 1107. Prior acts ratified and adopted

All actions taken prior to the effective date of this ordinance by the Mayor and/or Town Council to grant, enforce or to administer any cable communications franchise are hereby ratified and adopted and shall be effective in all respects as if taken pursuant to this ordinance.

[Ord. 1999-04, adopted 7/12/1999]

Chapter 12

SMALL WIRELESS TELECOMMUNICATIONS FACILITIES

Sec. 120. Intent and Purpose.

It is the intent of the Town Council to promote the Town's public health, safety, and general welfare by providing regulatory requirements for the installation and maintenance of small wireless telecommunications facilities in the public rights-of-way. The purpose of this Chapter is to regulate the same to enhance vehicular and pedestrian safety and avoid interference with motorist and pedestrian sightlines; to protect and minimize damage to trees and plants of the Garrett Park Arboretum; to reduce visual clutter and prevent unsightly or out-of-character deployments consistent with the goals of the Town's National Register of Historic Places designation; to preserve the value of property and the character of the neighborhood; and to otherwise protect the health, safety, and general welfare of the town and its residents, and the public at large.

Sec. 121. Definitions.

“Base Station” means a structure or equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term does not include a Tower or any equipment associated with a Tower.

“Collocate” means to install or mount a Small Wireless Facility in the public Right-of-Way on an existing Support Structure, an existing Tower, or on an existing Pole to which a Small Wireless Facility is attached at the time of the application. “Collocation” has a corresponding meaning.

“Communications Facility” means, collectively, the equipment at a fixed location or locations within the public Right-of-Way that enables communications services, including: (i) radio transceivers, antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. The term does not include the Pole, Tower, or Support Structure to which the equipment is attached.

“Pole” means a legally constructed pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material, located or to be located within a public Right-of-Way. The term does not include a Tower or Support Structure.

“Right-of-Way” means any unpaved street area dedicated to public use.

“Small Wireless Facility” means a Wireless Facility that meets all of the following conditions:

- (1) The structure on which antenna facilities are mounted (i) is fifty (50) feet or less in height, including existing antennas, or (ii) is no more than ten (10) percent taller than other adjacent structures, or (iii) is not extended to a height of more than fifty (50) feet or by more than ten (10) percent above its preexisting height, whichever is greater; and
- (2) Each antenna associated with the deployment, excluding the associated equipment, is no more than three (3) cubic feet in volume; and
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty-eight (28) cubic feet in volume; and
- (4) The facility does not require antenna structure registration under Federal law; and
- (5) The facility does not result in human exposure to radiofrequency radiation in excess of applicable safety standards under Federal law.

“Support Structure” means a structure in a public Right-of-Way other than a Pole or a Tower to which a Wireless Facility is attached at the time of the Application.

“Tower” means any structure in a public Right-of-Way, within or outside the boundaries of the Town, built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.

“Wireless Facility” means the equipment at a fixed location or locations in the public Right-of-Way that enables wireless telecommunications services. A Small Wireless Facility is a type of a Wireless Facility. The term does not include the Pole, Tower, or Support Structure on, under, or within which the equipment is located or collocated, or the coaxial, fiber-optic, or other cabling between Communications Facilities or Poles, or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

“Wireless Service Provider” or “Provider” means a person who provides wireless services.

“Wireless Services” means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

Sec. 122. Permit and Access Agreement Required.

- (a) No person shall construct, install, maintain, or perform any work in the public Right-of-Way related to a Communications Facility or any Tower without first receiving a Permit and paying any applicable fee as required under this Chapter. No permit shall be issued until the applicant has entered into a Right-of-Way Access Agreement in a form approved by the Town, according to this Chapter. A permit shall not be required for ordinary maintenance and repair, as determined by the Town.
- (b) The Right-of-Way Access Agreement shall set forth, at a minimum, the following: (a) the maximum term of the agreement and the bases for termination; (b) the scope of the authority; (c) the operator’s maintenance obligations; (d) the operator’s indemnification and insurance requirements; (e) emergency contacts and required response to emergencies related to facilities; and (f) the Town’s right to access and inspect the operator’s books and records.

Sec. 123. Permit Application Requirements.

- (a) An application for a permit under this Chapter must contain or be submitted with the following:
 - (1) The applicant’s name, address, telephone number, and e-mail address, including emergency contact information for the Applicant;
 - (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application;

- (3) A description of the proposed work and the purposes and intent of the proposed facility sufficient to demonstrate compliance with the provisions of this Chapter;
 - (4) If applicable, a copy of the authorization for use of the property from the Pole, Tower, or Support Structure owner on or in which the Communications Facility will be placed or attached;
 - (5) Detailed construction drawings regarding the proposed facility;
 - (6) A structural report performed by a duly-licensed engineer evidencing that the Pole, Tower or Support Structure can adequately support the Collocation (or that the Pole, Tower, or Support Structure will be modified to meet structural requirements) in accordance with applicable codes;
 - (7) A certification by a radiofrequency engineer that the Communications Facility will comply with the radiofrequency radiation emission standards adopted by the Federal Communications Commission; and
 - (8) The applicable application fee, bond, Right-of-Way Access Agreement, and Right-of-Way access fee, as may be adopted and amended by resolution of the Town Council.
- (b) The Town may require the posting of a bond to guarantee the prompt and proper restoration of the public Right-of-Way. The bond may be in such amount as the Town Manager deems necessary, in the Town Manager's discretion.
- (c) In exchange for the privilege of non-exclusive use of the public Right-of-Way, the applicant shall pay the Town such access and recertification fees as may be established and amended by the Town by resolution from time to time.
- (d) Any permit issued under this Chapter shall be valid for a period of twelve (12) months after issuance.
- (e) No work may be performed except in strict accordance with applicable law and the Town permit and all approved plans and specifications.
- (f) No permit shall be issued except to a wireless service provider with immediate plans for use of the subject Communications Facility. A permit issued under this Chapter may not be assigned or transferred.

Sec. 124. Standards for Deployment in the Public Right-of-Way.

- (a) *No Interference with Right-of-Way.* No person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower so as to interfere with the use of the public Right-of-Way by the Town, the general public, or other persons authorized to use or be present in or upon the public Right-of-Way, or otherwise hinder the ability of the Town to improve, modify, relocate, abandon or vacate a public Right-of-Way or any portion thereof. Unless otherwise approved by the Town, any new Tower or Support Structure must not confront a driveway apron and must be located no closer than five (5)

feet from any adjacent driveway apron and be otherwise located to avoid interference with pedestrian and motorist sightlines and use.

(b) Compliance with Design Standards; Unsightly or Out-of-Character Deployments. Unless otherwise approved by the Town in order to prevent an effective prohibition of service in violation of applicable law, no person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower except in accordance with the following design standards:

- (1) All Communications Facilities shall be located and designed so as to minimize visual impact on surrounding properties and from public rights-of-way, and so as to not interfere with motorist and pedestrian sightlines, especially at intersections.
- (2) Any new Tower or Support Structure shall be located on the same side of the street as nearest primary electrical distribution lines.
- (3) All radio transceivers, antennas, power supply (including backup battery), and comparable equipment installed on a Tower, Pole, or other Support Structure shall be installed at a height of at least fifteen (15) feet above ground level.
- (4) No Tower may be located closer than one thousand (1,000) feet of another Tower.
- (5) No more than five (5) antennas may be located on any single Tower, Pole, or Support Structure.
- (6) All coaxial, fiber-optic, or other cabling and wires shall be contained inside the Tower, Pole, or other Support Structure or shall be flush-mounted and covered with a metal, plastic or similar material matching the color of the Tower, Pole, or other Support Structure on which it is installed.
- (7) The Provider shall, at its sole cost and expense, keep and maintain its Communications Facilities, Poles, Support Structures and Towers in the Public Right-of-Way in a safe condition, and in good order and repair.
- (8) Any assignment/subleasing/sublicensing of a Communications Facility must comply with the terms of this Chapter.
- (9) All Communications Facilities shall comply with such additional design standards as may be set forth in administrative regulations issued by the Town.
- (10) All Communications Facilities shall be subject to an annual recertification and recertification fee to verify compliance with applicable legal standards

regarding emissions, standards established by this Chapter, and design standards set forth in administrative regulations.

(c) *Protection of Trees.*

- (1) Unless otherwise approved by the Town in order to prevent an effective prohibition of service in violation of applicable law, no person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower so as to interfere with the structure and health of a tree or other plant material within the Garrett Park Arboretum without approval by the Town Manager, in consultation with the Town Arborist and Arboretum Committee as appropriate.
- (2) Unless otherwise approved by the Town in order to prevent an effective prohibition of service in violation of applicable law, no person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower so as to require the removal of a tree or other plant material within the Garrett Park Arboretum without approval by the Town Council, in consultation with the Town Arborist and Arboretum Committee as appropriate.

(d) *Location Underground.* [Reserved].

(e) *Modification of Wireless Facilities.* The Town shall approve any request for a modification of an eligible existing Tower or base station that does not substantially change the physical dimensions of such Tower or base station, in accordance with Federal law.

(f) *Restoration of Public Right-of-Way.* The applicant shall restore, repair, and/or replace any portion of the public Right-of-Way that is damaged or disturbed by the applicant's work, to the satisfaction of the Town. Such restoration work shall be completed no later than thirty (30) days following completion of the project, or termination of the Right-of-Way Access Agreement, and shall be warranted by the applicant for a period of one (1) year to be free from defects in materials and workmanship.

(g) *Removal, Relocation, and Abandonment.* Within thirty (30) days following written notice from the Town, or such other time as the Town may require, the Town may terminate a Right-of-Way Access Agreement or require other action in connection therewith, and the owner shall, at its own cost and expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any of its Communications Facilities, Poles, Support Structures, or Towers within the public Right-of-Way, and restore the Right-of-Way as required by the Town, whenever either: (i) the terms of the Right-of-Way Access Agreement have been violated; (ii) the Communications Facility has not been used for a period of ninety (90) days, or has otherwise

been abandoned or not maintained, or (iii) the Town has determined, in its sole discretion, that such action is necessary for the construction, installation, repair, or maintenance of any public improvement or otherwise necessary for the public health, safety, or welfare. If the owner fails to take action as required by this section, the Town or its contractor may do so and the owner shall be responsible for all costs and expenses incurred by the Town related to such work.

Sec. 125. Enforcement.

- (a) Any violation of the provisions of this Chapter shall be a municipal infraction subject to the imposition of a fine of \$100 for any single initial violation, and \$200 for each day or a repeat or continuing violation.
- (b) Each day that a violation continues shall be a separate offense.
- (c) In any case where the Mayor has reason to believe that there may have been an un-remedied violation of this Chapter, the Mayor may issue a Notice of Violation, setting forth the information required in Chapter 9 of this Code, and the Town may seek abatement as provided therein or as otherwise authorized by law.